IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.15 OF 1996

The State of Maharashtra ...Appellant

vs.

Kana Janardan Katekar ...Respondent

WITH
FIRST APPEAL NO.759 OF 1996

Kana Janardhan Katekar ...Appellant

vs.

Special Land Acquisition Officer,Panvel ...Respondent

Ms Geeta Mulekar,A.G.P.for the Appellant in F.A.No.15/1996 and for the Respondent in F.A.No.759/1996
Mr.N.J.Patil for the Respondent in F.A.No.15/1996 and for the appellant in F.A.No.759/1996

CORAM: A.S.OKA,J.
DATE : DECEMBER 3,2007.

ORAL JUDGMENT:

1. The subject matter of the challenge in these two appeals is to the Judgment and Award dated 24th December 1993 passed by the learned II Additional District Judge, Raigad at Alibag. The said Judgment and Award has been passed in a Reference under section 18 of the Land Acquisition Act,1894(hereinafter referred to as the said Act) made at the instance of the Respondent in the First Appeal No.15 of 1986.

2. The land subject matter of the Appeals was notified on 3rd February 1970 under section 4 of the said Act for the public

purpose of setting up a satellite city of Navi Mumbai. An Award was made under section 11 of the said Act on 4th July 1986. As the claimant did not accept the Award, a Reference under section 18 of the said Act was made at his instance. By the impugned Judgment and Award the Reference Court fixed the market value of the acquired land at the rate of Rs.5/- per sq.meter and granted statutory benefits to the claimants. The First Appeal No.15 of 1986 has been filed by the State of Maharashtra challenging the enhancement granted by the Reference Court. First Appeal No.759 of 1996 has been filed by the original claimant for seeking enhancement in market value granted by the Reference Court.

3. The learned A.G.P submitted that the acquired land is not located in the heart of the village Dapoli and it is at the distance of 1 kilometer from the village. She submitted that there is no evidence of any non-agricultural potentiality brought on record by the claimant and therefore,there was no ground for granting enhancement. The learned Advocate for the claimant placed reliance on the decision of the Division Bench of this court dated 18th July 2001 in First Appeal No.462 of 1990 (State of Maharashtra Vs.Tulshiram Krishna and others) along with other connected first Appeals. He pointed out that for a similar land, this court has fixed the market value of Rs.10/- per sq.meter. He submitted that, therefore, a case is made out for grant of enhancement.

4. The claimant examined himself as well as one Mr.Manohar Gopal Vaidya, a valuer. It is not in dispute that the acquired land is situated at village Dapoli. The claimant has stated that the acquired land is at a distance of 1 kilometer from village Dapoli. He has stated that Panvel Uran and Panvel Ulwa road pass through the village Dapoli. Same is the description of the acquired land by other witness Shri Vaidya. According to the said witness Shri Vaidya, the acquired land had potential for non agricultural use.

5. It will be necessary to refer to the decision of the Division Bench of this Court dated 18th July 2001 in case of Tulshiram Krishna (supra). It is not in dispute that the Appeals before the Division Bench arose out of awards under section 18 of the said Act in respect of the lands situated at village Dapoli, Taluka Panvel, District Raigad. The said lands were also notified for the same public purpose under the same notification under section 4 of the said Act. Perusal of the decision of the Division Bench shows that the Division Bench has considered the location of village Dapoli and various advantageous features of the village such as proximity to Panvel Uran Road and proximity to Uran. The Division Bench noted that the village Dapoli has a railway facility for transportation and city of Bombay is approachable by using a waterway. Considering all the advantageous features of the

lands in village Dapoli, this Court came to the conclusion that the market value of the lands was Rs.10/- per sq. meter. It is not in dispute that the decision of the Division Bench has attained finality.

6. The decision of the Division Bench is certainly relevant for deciding the market value of the land subject matter of these two Appeals. As stated earlier, the Division Bench has dealt with the acquisition of various lands in the same village which were notified for the same public purpose under the same notification under section 4 of the said Act. There is no dispute that the acquired land subject matter of these two Appeals is located within the limits of village Dapoli. The reference to the distance of 1 kilometer is obviously to the distance between the acquired land and the heart of the village i.e. the Gaothan. The advantageous features which are considered by the Division Bench were certainly available to the acquired land and therefore, the market value of the acquired land which is the subject matter of these Appeals will be governed by the decision of the Division Bench. There is no dispute regarding the grant of statutory benefits by the reference court. The Appeal preferred by the State Government must fail and the Appeal preferred by the Respondent must succeed.

7. Hence, I pass the following order :

i) First Appeal No.15 of 1996 is dismissed with no order as to costs.

ii) First Appeal No.759 of 1996 is partly allowed. The impugned Judgment and Award is modified by holding that the Appellant in this Appeal will be entitled to the market value at the rate of Rs.10/- per sq. meter. The Appellant will be entitled to proportionate costs throughout. The said Appellant will be entitled to all the statutory benefits which are granted by the impugned Judgment and Award.

iii) The reference court will calculate the total amount payable to the Appellant in First Appeal No.759 of 1996. This exercise shall be completed within a period of four months from the date of receipt of the writ of this order.

iv) Writ to be sent immediately.

JUDGE